

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

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| <p>KEVIN CHRISTOPHER MICHEAL TRIPP,</p> <p>Plaintiff,</p> <p>vs.</p> <p>ARTHUR ALLCOCK, Associate Warden, South Dakota State Penitentiary, in his individual and official capacity; JENNIFER DRESKE, Deputy Warden, South Dakota State Penitentiary, in her individual and official capacity; EUGENE REGIER, Doctor, South Dakota State Penitentiary, in his individual and official capacity; ROBERT VESTLIE, Senior Correctional Officer, South Dakota State Penitentiary, in his individual and official capacity; and TAMMY TOP, Certified Nurse Practitioner, South Dakota State Penitentiary, in her individual and official capacity;</p> <p>Defendants.</p> | <p>4:17-CV-04076-KES</p> <p>ORDER STRIKING SECOND AMENDED COMPLAINT AND GRANTING MOTION FOR PROTECTIVE ORDER</p> |
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Plaintiff, Kevin Christopher Micheal Tripp, an inmate at the South Dakota State Penitentiary, filed a pro se lawsuit under 42 U.S.C. § 1983. Tripp filed a second amended complaint and defendants move for a protective order staying discovery until the court determines the issue of qualified immunity.

Under Rule 15(a)(2) of the Federal Rules of Civil Procedure, a party may amend its pleading a second time “only with the opposing party’s written consent or the court’s leave.” Because Tripp did not receive the opposing party’s written consent or the court’s leave, his second amended complaint is stricken from the record.

Defendants move the court to enter a protective order. Under Rule 26(c), “the court has discretion to stay discovery on other issues until the critical issue has been decided.” 8A Charles Alan Wright, Arthur R. Miller, and Richard L. Marcus, *Federal Practice and Procedure* § 2040 (3d ed.). A stay of discovery is within the district court’s discretion and is reviewed by the appellate court for an abuse of that discretion. *Steinbuch v. Cutler*, 518 F.3d 580, 588 (8th Cir. 2008) (citing *Lakin v. Prudential Sec., Inc.*, 348 F.3d 704, 713 (8th Cir. 2003)); see also *Maune v. Int’l Bhd. of Elec. Workers*, 83 F.3d 959, 963 (8th Cir. 1996) (upholding the district court’s granting of a party’s request to stay discovery). Because the qualified immunity issue may be dispositive, the court grants defendants’ motion to stay discovery.

Thus, it is ORDERED

1. Tripp’s Second Amended Complaint (Docket 20) is stricken from the record.
2. Defendants’ motion for protective order (Docket 23) is granted.

Discovery will be stayed until the court determines the issue of qualified immunity. If summary judgment is denied, the stay of discovery will be lifted.

3. Defendants shall file their motion for summary judgment by
December 31, 2017.

Dated October 19, 2017.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER

UNITED STATES DISTRICT JUDGE